defense that the prior or concurrent negligence of the other contributed to the injury. *Ry. Co.* v. *Callaghan*, 56 Fed. 988; *Lane* v. *Atlantic Works*, 107 Mass. 104; *Weik* v. *Lander, Admr.*, 75 Ill. 93; *Johnson* v. *Northwest Tel. Exch. Co.*, 48 Minn. 433. See also 1 THOMP. NEG. [2nd ed.], Sec. 75, and cases there cited. As a test of concurrence many courts lay down that if the injury could not have happened in the absence of either the defendant's negligence or that of the third person, then the two are concurrent causes. *Quill* v. *Ry. Co.*, 11 N. Y. S. 80, aff. 126 N. Y. 629; *Pastene* v. *Adams*, 49 Cal. 87; *Martin* v. *Iron Works*, 31 Minn. 407; *Mahar* v. *Steuer*, 170 Mass. 454; *Gonzales* v. *City of Galveston*, 84 Tex. 3; *Snydor* v. *Arnold*, 122 Ky. 557. As stated by the court in *Johnson* v. *Northwest Tel. Exch. Co., supra*, "The negligence of each is a proximate cause where the injury would not have occurred but for that negligence." Some of the federal courts, however, have not given the rule such a liberal interpretation. *Cole* v. *German Savings & Loan Soc.*, 124 Fed. 113; *Mella* v. *Northern Steamship Co.*, 162 Fed. 513; *Jennings* v. *Davis*, 187 Fed. 703; *Ry. Co.* v. *Gelvin*, 238 Fed. 14. But see *Ry. Co.* v. *Callaghan, supra*, and *Gas & Elec. Co.* v. *Nicholson*, 152 Fed. 389. As was decided in the principal case, the question whether the defendant's negligence was the proximate cause of the injury is for the jury. And by the weight of authority it would seem that the defendant's negligence must be considered proximate to the result if the jury find that it contributed in any degree thereto, regardless of the relative degree of culpability of the third person. *Eads* v. *City of Marshall*, 29 S. W. (Tex. Civ. App.) 170 (no official report); *Ry. Co.* v. *McWhirter*, 77 Tex. 356; *Griggs* v. *Fleckenstein*, 14 Minn. 81; *McCauley* v. *Norcross*, 155 Mass. 584; *Hunt* v. *Ry. Co.*, 14 Mo. App. 160; *Tel. Co.* v. *Gasper*, 123 Ky. 128; *Lundeen* v. *Elec. Light Co.*, 17 Mont. 32.

SEARCHES AND SEIZURES—CONSTITUTIONAL LAW—EVIDENCE.—D was convicted of having intoxicating liquors in his possession for the purpose of sale, in violation of a statute. Police officers illegally searched D's residence without a warrant and the liquor found there was used as evidence against him, despite objections to its admissibility made at the trial. *Held*, it was error, for evidence illegally obtained is admissible in evidence. *Youman* v. *Commonwealth* (Ky., 1920), 224 S. W. 860.

"It has long been established," writes Professor Wigmore in his work on EVIDENCE, page 2955, "that the admissibility of evidence is not affected by the illegality through which the party has been enabled to obtain the evidence," and until recently at least this principle has been followed with almost unanimity by the courts. See notes in L. R. A. 1915 B 834, and 34 L. R. A. (N. S.) 59. Any doubts cast upon this doctrine in *Boyd* v. *United States*, 116 U. S. 616, were seemingly dispelled in *Adams* v. *New York*, 192 U. S. 585, where the orthodox rule was broadly announced and followed. However, the Supreme Court had become dissatisfied with its position and its inevitable result in encouraging such unlawful seizures, and when the question next came before it in *Weeks* v. *United States*, 232 U. S.

383, extricated itself by formulating the rule that evidence unlawfully secured will not be admitted if application be made before its return, and that the rule announced in the *Adams* case is applicable only when the objection is made for the first time upon the trial; and this theory has been followed to its logical conclusion in *Silverstone Lumber Co.* v. *United States,* 251 U. S. 385. Accord, *People* v. *Marxhausen,* 204 Mich. 559. In a well-considered case, *Williams* v. *State,* 100 Ga. 511, Lumpkin, J., speaking for the court, promulgated the rule that the admissibility of evidence was determined independently of the method by which it was obtained, but evidently suffered a change of heart when *Evans* v. *State,* 106 Ga. 519, involving admissibility of evidence unlawfully obtained by search of person without warrant, was before him, after a futile attempt at reconciliation with the former case; and in *Underwood* v. *State,* 13 Ga. App. 206, the appellate court followed *Evans* v. *State, supra.* The rule declaring illegally obtained evidence inadmissible, having in its favor the salutary effect of discouraging unlawful seizures, commends itself to the writer, but see 9 ILL. L. REV. 43 for the contrary view.

TRUSTS—SAVINGS BANK DEPOSITS IN TRUST.—A deposit in a savings bank was made in the name of the depositor "as trustee" for a named beneficiary. The donor retained possession of the bank book until her death and no one was informed of the trust during her lifetime. In an action by the beneficiaries to enforce the trust, *held* (one justice dissenting), when not refuted by a contrary intent a deposit in trust raises a presumption of trust with which retention of the bank book is not inconsistent. The trust originates with the donor's act and notice to the beneficiary is not necessary. *Cazallis et al.* v. *Ingraham et al.* (Me., 1920), 110 Atl. 359.

In order to create a trust in personalty, the owner must have the requisite intent and there must be a declaration of such intent. Where money is deposited in a bank in trust for a third person, the intent may be shown in various ways. It may be by notice to the donee, or sometimes to a third person, by delivery of the bank book, by declarations to the donee or third parties, or by other circumstances connected with the deposit or the depositor's relations to the donee. *Alger* v. *North End Savings Bank,* 146 Mass. 418; *Matter of Holligan,* 82 Misc. (N. Y.) 30; *Conn. River Savings Bank* v. *Albee's Estate,* 64 Vt. 571; *Matter of Davis,* 119 App. Div. (N. Y.) 35; *Bath Savings Bank* v. *Hathorn,* 88 Me. 122; *Meriga* v. *McGonigle,* 205 Pa. 321; *Robinson* v. *Appleby,* 168 App. Div. (N. Y.) 509. But other circumstances may show equally well that there was no intent to make a gift. The deposit may be to evade taxation laws or legacy duties, *Conn. River Savings Bank* v. *Albee's Estate, supra;* to evade the statute of wills, *Nutt* v. *Morse,* 142 Mass. 1; to evade laws limiting the amount of savings deposits, *Brabrook* v. *Boston Five-Cent Savings Bank,* 104 Mass. 228; or to take advantage of a higher interest rate on small deposits, *Weber* v. *Weber,* 9 Daly (N. Y.) 211. In New York it is declared that a mere deposit in a savings bank by one person of his own money, in his own name as trustee for another, creates only a tentative trust which is revocable at will until the depositor dies or completes the